

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

13 CV 1338

----- x  
JILL STUART (ASIA) LLC,

Plaintiff,

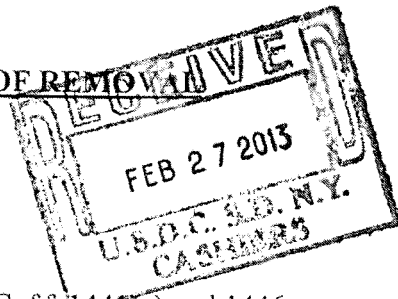
-against-

SANEI INTERNATIONAL CO., LTD., and  
SANEI INTERNATIONAL USA, LLC

Defendants.  
----- x

Case No. \_\_\_\_\_

**NOTICE OF REMOVAL**



PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1441(a) and 1446, defendants Sanei International Co., Ltd. ("Sanei") and Sanei International USA, LLC ("Sanei USA"), by and through their undersigned attorneys, hereby remove this action from the Supreme Court of the State of New York for the County of New York, where it is currently pending, to the United States District Court for the Southern District of New York. As grounds for removal, defendants state as follows:

1. On or about February 22, 2012, plaintiff filed in the Supreme Court of the State of New York for the County of New York a complaint naming Sanei and Sanei USA as defendants and presented to that court a motion by order to show cause. A copy of all papers and pleadings served in this matter is attached hereto as Exhibits 1-7, as identified in the appended index.

2. Sanei and Sanei USA were served with the Complaint on or about February 22, 2012. Thus, this Notice of Removal is timely under 28 U.S.C. § 1446.

3. The amount in controversy exceeds \$75,000. This action concerns an agreement to which Sanei and plaintiff are parties: the Amended and Restated Services Agreement dated as of April 13, 2007. Sanei has declared plaintiff in material breach of the

agreement for failing to repay \$450,000, and according to the agreement's terms, Sanei has terminated the agreement. In this action, plaintiff seeks a declaration that Sanei may not terminate the agreement and that plaintiff need not repay \$450,000. Plaintiff claims \$3.9 million in damages for breach of contract.

4. Upon information and belief, plaintiff Jill Stuart (Asia) LLC was, at the time of the commencement of this action, and still is, a citizen of New York. Defendants submit herewith as Exhibit 8, a letter submitted by counsel for plaintiff in a related federal case involving the same parties, *Jill Stuart (Asia) LLC et al. v. Sanei International Co., Ltd., et al.*, No. 12 Civ. 3699 (J. Forrest), indicating that plaintiff Jill Stuart (Asia) LLC is a New York citizen.

5. Defendant Sanei International Co. Ltd. ("Sanei"), was, at the time of the commencement of this action, and still is, a Japanese corporation with its principal place of business in Japan.

6. Defendant Sanei USA is a limited liability company formed under the laws of New York with a single member: Sanei Asset Co., Ltd. For purposes of federal diversity jurisdiction in the Second Circuit, the citizenship of an LLC is determined by the citizenship of its members, and not by its principal place of business or state of incorporation. *See Agility Logistics Corp. v. Elegant USA, LLC*, No. 09 Civ. 4719, 2009 WL 3094898, at \*1 (S.D.N.Y. Sept. 25, 2009) (citing *Handelsman v. Bedford Village Assocs. Ltd.*, 213 F.3d 48, 51-52 (2d Cir. 2000)). Sanei Asset Co., Ltd, is a corporation incorporated in Japan, with its principal place of business in Japan. It is a wholly owned subsidiary of Sanei. The citizenship of Sanei USA is, therefore, Japan.

7. Hence, complete diversity of citizenship under 28 U.S.C. § 1332 existed

between plaintiff and defendants at the time plaintiff commenced the action and has existed at all times from that date until the filing of this Notice of Removal.

8. Alternatively, under the doctrine of fraudulent joinder, the citizenship of Sanei USA is to be disregarded because plaintiff has no possibility of a claim against Sanei USA and appears to have joined Sanei USA for the purpose of attempting to defeat diversity jurisdiction. *See Pampillonia v. RJR Nabisco, Inc.*, 138 F.3d 459, 460-61 (2d Cir. 1998).

9. Defendants reserve the right to amend or supplement this Notice of Removal as may be appropriate.

10. Written notice of the filing of this Notice of Removal will be given to plaintiffs, and a copy of this Notice of Removal will be filed with the Clerk of the Supreme Court of the State of New York, County of New York as provided by 28 U.S.C. § 1446(d). A true and correct copy of the Notice of Filing of Notice of Removal to the Supreme Court of the State of New York, County of New York is attached hereto as Exhibit 9.

Dated: February 27, 2013

ORRICK, HERRINGTON & SUTCLIFFE LLP

By:

  
Lisa E. Simpson  
Hisan Dogramaci  
Daniel Kahn  
51 West 52nd Street  
New York, NY 10019  
tel: (212) 506-5000  
fax: (212) 506-5151  
email: lsimpson@orrick.com  
email: idogramaci@orrick.com  
email: dkahn@orrick.com

*Attorneys for defendants  
Sanei International Co., Ltd. and  
Sanei International USA, LLC*

INDEX OF ATTACHED DOCUMENTS

Exhibit Number	Description
1	Summons
2	Complaint
3	(Proposed) Order to Show Cause for Preliminary Injunction With Temporary Restraining Order
4	Memorandum of Law in Support of Plaintiff's Application for a Temporary Restraining Order and a Preliminary Injunction
5	Affidavit of Ronald Curtis in Support of the Order to Show Cause for a Preliminary Injunction with Restraining Order
6	Exhibits 1-12 to the Affidavit of Ronald Curtis in Support of the Order to Show Cause for a Preliminary Injunction with Restraining Order
7	Order to Show Cause for Preliminary Injunction With Temporary Restraining Order
8	Letter submitted by counsel for plaintiff in a related federal case involving the same parties, <i>Jill Stuart (Asia) LLC et al. v. Sanei International Co., Ltd., et al.</i> , No. 12 Civ. 3699
9	Notice of Filing of Notice of Removal to Federal Court